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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5 EUREKA DIVISION

6  
7 JOEL TAYLOR,

8 Plaintiff,

No. C 15-5465 NVJ (PR)

9 v.

10 PRISON HEALTH CARE,  
11 Defendant.  
12 \_\_\_\_\_ /

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

13 Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.

14 He has been granted leave to proceed in forma pauperis. (Doc. 15.)

15 **DISCUSSION**

16 **A. Standard of Review**

17 Federal courts must engage in a preliminary screening of cases in which prisoners  
18 seek redress from a governmental entity or officer or employee of a governmental entity.  
19 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
20 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may  
21 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at  
22 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police*  
23 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

24 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of  
25 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;  
26 the statement need only ""give the defendant fair notice of what the . . . claim is and the  
27 grounds upon which it rests.""" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations  
28 omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff states he was denied proper medical and dental care.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
19 proscription against cruel and unusual punishment.<sup>1</sup> *Estelle v. Gamble*, 429 U.S. 97, 104  
20 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
21 grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

22 \_\_\_\_\_  
23 <sup>1</sup> It is not clear if plaintiff is a pretrial detainee or a convicted prisoner. Even though  
24 pretrial detainees' claims arise under the Due Process Clause, the Eighth Amendment serves  
25 as a benchmark for evaluating those claims. See *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir.  
26 1996) (8th Amendment guarantees provide minimum standard of care for pretrial detainees).  
27 The Ninth Circuit has determined that the appropriate standard for evaluating constitutional  
28 claims brought by pretrial detainees is the same one used to evaluate convicted prisoners'  
claims under the Eighth Amendment. "The requirement of conduct that amounts to 'deliberate  
indifference' provides an appropriate balance of the pretrial detainees' right to not be punished  
with the deference given to prison officials to manage the prisons." *Redman v. County of San  
Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation omitted).

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1 A determination of "deliberate indifference" involves an examination of two elements: the  
2 seriousness of the prisoner's medical need and the nature of the defendant's response to  
3 that need. *Id.* at 1059.

4 A "serious" medical need exists if the failure to treat a prisoner's condition could  
5 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The  
6 existence of an injury that a reasonable doctor or patient would find important and worthy of  
7 comment or treatment; the presence of a medical condition that significantly affects an  
8 individual's daily activities; or the existence of chronic and substantial pain are examples of  
9 indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

10 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
11 substantial risk of serious harm and disregards that risk by failing to take reasonable steps  
12 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only  
13 "be aware of facts from which the inference could be drawn that a substantial risk of serious  
14 harm exists," but he "must also draw the inference." *Id.* If a prison official should have  
15 been aware of the risk, but was not, then the official has not violated the Eighth  
16 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,  
17 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison  
18 medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v.*  
19 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

20 It is difficult to discern the exact allegations of plaintiff's complaint. He states that he  
21 was denied medical care for a serious infectious disease but provides no details about the  
22 disease or the medical care that was withheld. He also provides a list of other allegations  
23 involving confiscated paperwork, exposure to Hepatitis, improper dental care, forcible  
24 medication, and retaliation. There are a few other pages attached to the complaint, but the  
25 writing is not entirely legible on the original or scanned copies.<sup>2</sup> In addition, plaintiff has not  
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27 <sup>2</sup> To the extent plaintiff is discussing his underlying conviction or ongoing prosecution  
28 he must file a separate action addressing those concerns.

1 identified any specific defendant.

2 The complaint is dismissed with leave to amend. Plaintiff should focus on a few  
3 related claims and he must specifically describe the alleged constitutional violations and  
4 identify individual defendants and describe their actions. The amended complaint must  
5 also be legible for the court to determine if plaintiff has presented cognizable claims.  
6 Plaintiff should also indicate if he is a pretrial detainee or a convicted prisoner.

7 **CONCLUSION**

8 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
9 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**  
10 **days** of the date this order is filed and must include the caption and civil case number used  
11 in this order and the words AMENDED COMPLAINT on the first page. Because an  
12 amended complaint completely replaces the original complaint, plaintiff must include in it all  
13 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
14 1992). He may not incorporate material from the original complaint by reference. Failure to  
15 amend within the designated time will result in the dismissal of this action.

16 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
17 court informed of any change of address by filing a separate paper with the clerk headed  
18 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
19 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
20 Federal Rule of Civil Procedure 41(b).

21 **IT IS SO ORDERED.**

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23 Dated: February 29, 2016.

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NANDOR J. VADAS  
United States Magistrate Judge

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